FILE COPY.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

Office Supreme Court U. S.
FILED
OCT 17 1905
JAMES H. McKENNEY,
Clerk.

FREDERICK W. LINCOLN AND OTHERS,
Plaintiffs in Error,
against
THE UNITED STATES,
Defendant in Error.

No. 149.

WARNER, BARNES & CO., LIMITED,
Appellant,
against
THE UNITED STATES,
Appellee.

No. 466.

Brief for Plaintiffs in Error and for Appellant in Opposition to Petition for Rehearing.

HENRY M. WARD,
Attorney for Plaintiffs in Error and Appellant,
32 NASSAU STREET,
New York City.

PAUL FULLER,
FREDERICK R. COUDERT,
HENRY M. WARD,
Counsel.

C. G. BURGOYNE, Walker and Centre Streets, N. Y.

Supreme Court of the United States,

OCTOBER TERM, 1904.

FREDERIC W. LINCOLN ET AL., Plaintiffs in Error, vs. THE UNITED STATES.	No. 149.
WARNER, BARNES & CO., LIMITED, Appellant, vs. THE UNITED STATES.	No. 466.

Brief for plaintiffs in error and appellant, in opposition to the petition for rehearing.

The opinion of this Court in these cases was handed down April 3d, 1905, and is reported in 197 U. S., 419. On May 29, 1905, the Attorney-General having asked leave to file a petition for rehearing, this Court made the following order :

" MAY 29, 1905.

" No. 149, Frederic W. Lincoln *et al.* vs. U. S.
" No. 466, Warner Barnes & Co., Ltd., vs. U. S.
" Leave is given to file petitions for rehearing
" *addressed solely to the two points* whether Con-

" gress ratified the collection of the sums sought
" to be recovered in these suits, and whether it
" had power to do so; and the applications for
" rehearing will be taken as submitted by both
" sides on printed briefs on or before the first
" Monday of the next term."

Understanding as we do that all the other questions in the case are finally settled by the opinion and in view of the explicit language of the order, we shall not follow the counsel for the Government in their discussion of any questions other than the two above stated.

First.

NEITHER BY THE ACT OF JULY 2D, 1902, NOR BY ANY OTHER ACT HAS CONGRESS RATIFIED THE COLLECTION OF THE DUTIES INVOLVED IN THESE CASES, IMPOSED UPON MERCHANDISE BROUGHT FROM NEW YORK TO MANILA BETWEEN APRIL 11TH, 1899, AND OCTOBER 25TH, 1901.

(*a*) *The duties involved in these cases were all collected by military officers under the alleged authority of the order of July 12th, 1898, and the amendments thereof.*

This is found as a fact by the Court of Claims in the Warner Barnes case (Finding VI., p. 13).

(*b*) *This order of July 12th, 1898, did not authorize the collection of duties upon articles brought to Manila from the United States from the moment that the United States ceased to be a foreign country with respect to Manila.*

It is with the interpretation, not with the validity of this order that we are now concerned.

This order being substantially identical with the Porto Rican order construed by this Court in the first

Dooley case (182 U. S., 222) must, necessarily, receive the same construction.

The two orders are set out in full and their identity demonstrated in our original brief (pages 12, 13), and this Court has decided (197 U. S., 428) that this "was "an order intended to deal with imports from foreign "countries only and Philippine ports not in the actual "military control of the United States," or, as was said in the first Dooley case, 182 U. S., at 235:

> "Without questioning at all the original validity "of the order *imposing duties on goods from for-* "*eign countries*, we think the proper construction "of that order was that it ceased to apply to goods "imported from the United States from the mo- "ment that the United States ceased to be a for- "eign country with respect to Porto Rico, and "that until Congress otherwise constitutionally "directed, such merchandise was entitled to free "entry."

(c) *None of the so-called "amendments" changed this meaning of the order or authorized the collection of duties on imports from the United States after the treaty took effect.*

The learned counsel for the Government refer to several amendments to the order which, although referred to in the Government's original brief, they claim escaped the attention of the Court.

Only three of these require consideration. It is claimed by the Solicitor-General in his petition, page 13, that General Orders No. 10 of October 26, *1898*, applied to every vessel and every cargo and by exempting from duties and charges all material for the use of the United States, created a necessary inference that other merchandise from the United States was to be taxed. It is quite sufficient to say that under the opinion of this Court in the first Dooley case the order of July 12, 1898—which was not put in force until November 10th, 1898—did authorize the collection of duties upon imports from the United States as long as

the United States remained a foreign country with respect to Manila, that is until April 11, 1899. This amendment made in October, 1898, before even the signing of the treaty, does not tend to raise any inference at all as to the proper construction of the order after the treaty took effect.

The second so-called "amendment" is the President's order of December 21st, 1898, from which a short extract is made at page 5 of the petition. We shall consider it somewhat more fully.

This order recites that the destruction of the Spanish fleet and the reduction of the City of Manila and the surrender of the Spanish forces have practically effected the conquest of the islands and the *suspension of Spanish sovereignty* and that by the treaty of peace the future control and government of the islands are ceded to the United States. This cession it was stated, puts upon the country "responsible obligations of "government" and confers rights of sovereignty; and it is further stated that "the taxes and duties hereto-"fore payable by the inhabitants to the late govern-"ment became payable to the authorities of the "United States," and that "all ports and places in the "Philippine Islands in the actual possession of the "land and naval forces of the United States will be "open to the commerce of all friendly nations," and that "all goods, and wares not prohibited for military "reason by due announcement of the military authori-"ties *will be admitted upon payment of such duties and "other charges as shall be in force at the time of their "importation.*"

This order of the President of the 21st of December, 1898, we respectfully submit, so far from being a continuance of the order of July 12th, 1898, is a tacit admission that as a war measure in the language of this Court "that order expired by its own terms when the war with Spain was at an end," and that as a consequence the President provided for the establishment of a new order of things, based upon the rights of sovereignty and the cession of the islands which the order recites. As a consequence it provided for the

payment to the then sovereign, the United States, of all "taxes and duties heretofore payable by the inhabitants to the *late government;*" the new sovereignty accordingly declared all ports and places in the newly ceded possession "open to the commerce of all friendly nations." As the Treaty of Peace had not yet been ratified, the order prudently reserved the right to prohibit for military reasons the admission of certain goods and wares, and provided that all others should be admitted "upon payment of such duties and other charges *as shall be in force at the time of their importation*", *i. e.* upon payment of the usual and ordinary tariff duties applicable to all foreign merchandise imported into the country. The word "importation" as here used plainly meaning that only goods "imported" from countries foreign to the Philippines should be subject to duty.

In other words the President, anticipating by several months the ratification of the treaty and its legal effect, asserted the sovereignty of the United States in the Philippines, the extinction of the sovereignty of the late government and ceased to consider the United States as foreign to the Philippines, declaring it to be the "sovereign" of that territory and extending commercial hospitality to all friendly nations; surely this is no "amendment" or continuance of the order of July 12th, but a quite plain notification that the term during which "military contributions" had been enforced was at an end and that thereafter the usual taxes and duties imposed by law on importations from foreign countries should be paid to the United States.

This theory—so entirely in accord with the opinion of the Court in this case—is emphasized by the order of May 3d, 1899 (p. 3 of brief on present hearing, and page 5 of original Petition for rehearing), constituting the Philippine Archipelago and the Island of Guam into a collection district, making Manila "the chief port of entry," directing the assignment of an army officer as "collector" and establishing sub-ports of entry.

It seems clear to us that these two orders were am-

ple notice to the officials in the Philippines that upon the ratification of the treaty the order of July 12th, 1898, would no longer apply to importations from the United States, and that the collection of such duties would not be "in accordance with the provisions of said order and subsequent amendments."

(*d*) *The President had not the power to impose any duties upon imports from the United States after the eleventh of April, 1899, until the enactment of legislation to that end by Congress.*

We do not mean to discuss the power of the Philippine Commission to enact a tariff imposing duties on goods brought from the United States. That question is not involved in the cases now before the Court.

In the first Dooley case, 182 U. S., 222, at 236, this Court says :

> "In our opinion the *authority* of the President
> "as Commander-in-Chief to exact duties upon im-
> "ports from the United States *ceased* with the
> "ratification of the treaty of peace, and her right
> "to the free entry of goods from the ports of the
> "United States continued until *Congress* should
> "constitutionally *legislate* on the subject."

It is not to be assumed that the President intended to exceed his lawful authority or to extend the operation of his war order beyond the war period.

Under the decisions in the *Diamond Rings* and in the cases at bar there is no distinction between the power of the President to exact duties in Porto Rico and his power in Manila.

(*e*) *The collection of these duties by the authorities of the Government of the Philippines not being in accordance with the provisions of the order of July 12th, 1898, and its amendments, was not ratified by Congress.*

The only act of Congress upon which the counsel for the Government now rely is that of July 2d, 1902, §§ 1 and 2, quoted in full at pages 7, 8 and 9 of their last brief.

In construing any act of the national legislature, the intention of Congress is to be ascertained from the language used in the act under consideration, not from the opinions of individual members of Congress, and not by an assumption as to what must have been the intention of Congress (*Knowlton vs. Moore*, 178 U. S., 41). The Government assumes that this act ratified *everything that has been done* in the Philippines, including the collection of duties upon imports from the United States. The Government discusses the act as if it expressly stated that the collection of duties on imports from the United States during the period in question was thereby ratified and confirmed. This is not the language of the section of the act in question. On the contrary, the act purports to ratify not *every* act of the authorities *in collecting duties*, but only

> " the action of the President * * * *as set*
> " *forth in his order* of July 12th, 1898, whereby
> " a tariff of duties and taxes, *as set forth by said*
> " *order*, was to be * * * collected * * *
> " together with the subsequent amendments of
> " said order * * * and the action of the au-
> " thorities of the Government of the Philippine
> " Islands, *taken in accordance with the provisions*
> " *of said order.*"

This Court having a year before this act was passed construed the Porto Rican order as not applying to imports from the United States after April 11, 1899, and none of the amendments having changed the order in this particular it necessarily follows that the collection of duties on imports into Manila from New York after that date was not in accordance with the identical provisions of the Philippine order and was therefore not included within the ratification. The language of the act is not susceptible of any other construction.

No intendment outside of this plain language can be imported into the act from extraneous considerations. The intention to ratify an act which was unauthorized

by law must be clear and unequivocal. Freedom from governmental exactions is the normal condition and the subjection of a citizen to a tax will not be inferred but must be plainly asserted by the law-maker. This has been the rule of interpretation of revenue laws.

Hartranft vs. Wiegmann, 121 U. S., 609.
American Net & Twine Co. vs. Worthington, 141 U. S., 468.

The argument is also made that inasmuch as the Secretary of War directed that duties should be collected on imports from the United States, the construction he thereby put upon the order was the proper construction and the construction which Congress intended to ratify. With regard to this point, it is sufficient to say that the cablegram from the Secretary of War to the Governor of the Philippines, dated June 8th, 1901, ten days after the decision of this Court in the Porto Rican cases, which is quoted at pages 8 and 9 of the Attorney General's first brief on this petition shows simply this; that until the Diamond Rings case was decided, it was uncertain whether or not the decision in the first Dooley case applied to the situation in the Philippine Islands and that the Secretary of War therefore had resolved this doubt in favor of the Government. In his cablegram he says, "As the "question of the President's power to impose du- "ties in the Philippine Islands under the existing "conditions of military occupation has not been "decided by the court, the President has deter- "mined to continue to impose duties as hereto- "fore." The decision in the Diamond Rings case was not handed down until December, 1901, and on the 15th of November, 1901, the President's order of July, 1898, had been superseded by the Tariff Revision Law of the Philippine Commission so that the executive department did not, after the legal status of the Philippines had been passed upon by this Court, either modify the terms of the order or hold that its language embraced imports from the United States. It is the universal practice for the executive department to re-

solve all doubtful questions of this character in favor of the Government and then, in case of a mistake, the importer has a remedy by action. But had the Secretary of War in June, 1901, directed that no further duties should be collected in the Philippines on imports from the United States and had this Court decided the Diamond Rings case the other way, the Government could never have recovered duties on goods admitted free prior to the decision (see on this point Attorney General's second brief, pp. 31, 32).

The honorable Secretary was not acting judicially but admittedly taking an extreme position in the hope that it might be sustained by the Court. Therefore, the direction of the Secretary of War had no significance as an interpretation of the President's order, and can hardly be taken to have given any color to the language used by Congress in the act of ratification.

This Court has recently held that a hundred years of administrative construction are not conclusive.

Fairbank vs. U. S., 181 U. S., 283.

(*f.*) *The President, having in his capacity of Commander-in-Chief no authority to collect duties on imports from New York after the treaty took effect, the action of his subordinates in collecting such duties was not ratified by this act.*

The act is drawn with remarkable care and Congress expressly did *not* ratify any illegal action on the part of the President or any of his subordinates. On the contrary it is only the action taken by the President "*by virtue of the authority vested in him as Commander-in-chief of the Army and Navy*, as set forth in his "order of July 12th, 1899, and the actions of the authorities of the government of the Philippine Islands, "taken in accordance with the provisions of said "order and subsequent amendments," which are ratified. This act does not purport to give to the President of the United States any power or authority

which he would not have had without it (assuming for argument that Congress can increase the power vested in the President by the Constitution). It is simply a ratification by Congress of such action taken by the President as he had power to take "*by virtue of the authority vested in him as Commander-in-chief*". How, then, is this authority vested in the President? By the Constitution of the United States and by that alone. His power is stated and defined by that instrument. By whom are the extent and limitations of this power to be decided when they are involved in an action at law? By Congress, or by the President himself, or by this Court? Indisputably by this Court. And this Court in the first Dooley case had at the time of the passage of this act already defined the extent and limitations of the power of the President in imposing a tariff of customs duties in the Island of Porto Rico.

It is further to be noted, from the documents submitted by the Government, that the Executive Department had long entertained serious doubts as to whether the order of July, 1898 applied to imports from the United States after the ratification of the treaty. In fact, we find that on December 29th, 1900, immediately after the argument of the Diamond Rings case, the Philippine Commission prepared and forwarded to the Secretary of War a new proposed tariff bill which *expressly* imposed duties upon importations from the United States (see Attorney General's first brief on petition, page 7). The natural inference is that the tariff then in effect did not impose such duties.

Moreover, Congress, far from believing that either the President's order of July 12, 1898, or even the tariff enacted by the Philippine Commission, authorized the imposition of duties on imports from the United States, as urged by the Attorney General in his brief filed with the petition, pages 11, 12, had such serious doubts upon the subject that, in the Act of March 8, 1902 (32 Stat., 54), it followed the provision that the tariff enacted by the Philippine Com-

mission should "*be and remain* in full force and effect," with an express enactment reading :

> " *and* there shall be levied, collected, and paid
> " upon all articles coming into the Philippine
> " Archipelago from the United States, the rates
> " of duty which are *required by the said Act* to be
> " levied, collected, and paid upon like articles *im-*
> " *ported from foreign* countries into said archi-
> " pelago."

A quite unnecessary enactment if the tariff enacted by the Commission had imposed duties upon American imports. We deduce from the language used by Congress in this act directly the opposite conclusion from that deduced by the Attorney-General. To our mind it is clear that Congress did not consider that either the order of July 12, 1898, or the act of the Philippine Commission, authorized the imposition of duties upon goods brought into Manila from the United States.

Note, in passing, the technical accuracy of the language used by Congress in this act, in distinguishing between

> " articles *coming into* the Philippine Archipelago
> " from the United States " and " articles *imported*
> " from foreign countries."

Evidently both Congress and the President had the decisions of this Court in the insular cases in mind.

Congress is conclusively presumed to know the decisions of this Court ; so in this case it must be conclusively presumed that the language used in this act was intended to conform to the decision of this Court defining the authority which the President has as Commander-in-Chief. And since this Court decided in the first Dooley case that the authority vested in the President as Commander-in-Chief does not extend to the imposition of duties on imports from the United States, the interpretation of this act must necessarily be that Congress did not intend to and did not ratify any-

thing done by the President outside of, or in excess of, his authority. The collection of these duties was in excess of that authority, and therefore was not ratified.

It is urged that it cannot have been the intention of Congress to ratify

> " the President's action only so far as taken by
> " virtue of his *undoubted* authority as Commander-
> " in-Chief "

and to approve

> " only those proceedings and doings of his sub-
> " ordinate officers which were in *unquestioned* ac-
> " cordance with the provisions of the order"
> (Atty. Gen's. last brief, p. 6).

So expressed this argument sounds plausible. Let us however by paraphrasing it see how the proposition sounds for which the Government in now contending:

> " It was the intention of Congress to ratify
> " action taken by the President for which he had
> " no authority and Congress approved proceedings
> " and doings of his subordinate officers which were
> " without warrant of law and not in accordance
> " with the provisions of the order."

In other words, the ratification of " accordance " is the ratification of " discordance."

Is it to be supposed for a moment that if Congress had intended to approve the illegal and unwarranted seizure of the claimants' property by the subordinate military officers unsanctioned even by any order of the President—and that is what the exactions complained of were under the decision of the Court in this case in the respects unaffected by the pending application—it would have stated explicitly that it approved " the action of the authorities of the Government of the Philippine Islands *taken in accordance with the provisions of said order* and subsequent amendments ; " that if it intended to

ratify action of the President taken *outside of and beyond* the authority vested in him as Commander-in-Chief and *not* as set forth in his order of July 12, 1898, it would have stated explicitly that the

> "action of the President—*taken by virtue of the*
> "*authority* vested in him as Commander-in-Chief
> "of the Army and Navy *as set forth in the order* of
> "July 12th, 1898, whereby a tariff of duties was
> "to be levied and collected—together with the
> "subsequent amendments of said order are
> "hereby approved, ratified and confirmed."

If Congress had intended to ratify the collection of the duties on imports from the United States, it would have said so and not said the contrary.

But, it is urged, this ratification in the Act of July 2, 1902 is meaningless, unless it extends to the duties collected on imports from the United States after April 11, 1899, for the action of the President in ordering the collection of duties on imports from foreign countries before and after April 11th, 1899, and from the United States before that date was undoubtedly within his power, and the collection of such duties by the military subordinates was undoubtedly in accordance with the provisions of the order. Therefore, it is said, this action of the President and of his subordinates needed no ratification, and as said by the Attorney-General, page 6:

> "all those actions * * * were unquestionably valid without ratification by Congress under established principles of public law."

This argument has a certain speciousness; but it could be applied with equal or even greater force to many other acts of Congress ratifying actions of the Executive or of subordinate legistative bodies. See *Cross vs. Harrison*, 16 How., 164, where the Court having held that the duties were lawfully collected, refers at page 201, to acts of Congress ratifying all that

had been done by the military officers. Again and again Congress out of abundant caution ratifies that which needs no ratification and approves acts of the Executive which need no approval. Such legislation is usual and commendable. It tends to set at rest any questions which might arise and prevents the time of the courts being wasted with unnecessary inquiries.

But the ratification act as construed by the Court in this case and by ourselves is not by any means unnecessary or meaningless. The duties were originally collected under the order of July 12, 1898, as a military contribution while the war with Spain was in progress. Upon the transfer of sovereignty over the Philippines by the treaty signed on December 10th, 1898, the President on December 21, 1898, issued an order proclaiming the sovereignty of the United States in the Islands and directing that duties and taxes be collected for the future under existing laws not as a military contribution but as public revenues for the support of the government. When the treaty was ratified the order in so far as it was a military measure became *functus officio*, but the Philippines becoming thereby domestic territory of the United States, all applicable laws of the United States immediately became operative and it became the duty of the President not as Commander-in-Chief but as the Executive to put such laws in force and to establish a *de facto* civil government, administered as a matter of convenience if not of necessity by military officers. We can safely say that under the decision in *Cross vs. Harrison*, he would have been fully justified in putting the tariff laws of the United States into operation in the Philippines with respect to all importations from foreign countries. Instead of doing this he continued in force the tariff created by his order of July 12th, 1898, and established a collection district by the order of April 21, 1899, and made Manila the chief port of entry. The authorities of the Philippine Government collected duties under the provisions of these orders. The rates of duties established by the order of July 12, 1898 were quite different from those es-

tablished by the tariff laws of the United States, but as they were in every instance less, the merchants have no right to complain. A question however might well have been raised as to whether after April 11th, 1899, the President was justified in enforcing any tariff other than that sanctioned by an act of Congress. His power to do so was not directly involved in any of the Insular Cases and has never been squarely passed upon by this Court. We submit that it was to put this question at rest that Congress ratified the President's action. It may have been unnecessary. It was not meaningless.

Second.

CONGRESS HAD NOT THE POWER TO LEGALIZE THE COLLECTION OF DUTIES ON MERCHANDISE NOT SUBJECT TO DUTY AT THE TIME OF THEIR IMPORTATION.

Congress can only legalize and ratify an act which it has itself the power and authority to do and the power to do the act sought to be legalized must exist in Congress at the time of the ratification. The act must be presently—at the time of the curative act—within the scope of legislative authority.

> " It (the Legislature) could not ratify an act " previously done, *if at the date it professed to do so* " *it could not confer power to do it in the first in-* " *stance.*"
>
> *Grenada County vs. Brogden*, 112 U. S., 261, 271.

> " The exercise of the power implies legislative " authority over the subject as well at the time of " the curative statute as at the time of the enabling " statute. Legislative jurisdiction of the subject is " equally essential at both times ; both statutes

> " resting on the present authority of the legisla-
> " ture to authorize the proceeding and to pre-
> " scribe its details. Surely a statute could not
> " authorize a new proceeding or sanction an old
> " one in a matter presently without the scope of
> " legislative authority. We know of no excep-
> " tion to the rule that the power to do a thing
> " or to authorize it to be done *nunc pro tunc* im-
> " plies present right."
>
> *Kimball vs. Town of Rosedale*, 42 Wis., 413.

The act of ratification according to the interpretation claimed by the Government legalizes the imposition of duties upon articles of merchandise which at the time of their importation were not subject to duties. It fastens upon them an imposition from which they were exempt at the time they were brought into the country.

Had Congress in July, 1902, the power to impose duties upon importations already made, which at the time of importation were entitled to free entry? Certainly not, yet this is precisely the effect of the interpretation contended for.

Had Congress, in other words, the power to pass in July, 1902, an act of this purport :

> " All importations heretofore made into the
> " United States from the Philippine Islands and
> " into the Philippine Islands from the United
> " States, entitled to free entry under the law in
> " force at the time of their importation and ad-
> " mitted without the payment of duty, shall, never-
> " theless, be subjected to the payment of duties at
> " the following rates, to wit: etc." ?

The statement of the proposition we confidently submit is its own complete refutation, and yet there can be no doubt that the power to make retroactive laws legalizing the collection of duties for five years past, enforced under color of office at the time when the laws authorized no such collection, is in no way

distinguishable from the power to enforce the collection of duties retroactively imposed upon such merchandise as may have entered the country free of duty.

Third.

THE PETITION FOR A REHEARING SHOULD BE DENIED.

October 16, 1905.

PAUL FULLER,
FREDERIC R. COUDERT,
HENRY M. WARD,
Counsel for Plaintiffs in Error and Appellant.

FILE COPY.

Supreme Court of the United States.

Office Supreme Court U. S.
FILED
JAN 17 1906
JAMES H. McKENNEY,
Clerk.

Nos. 149 and 466.

OCTOBER TERM, 1904.

No. 149.

FREDERICK W. LINCOLN, HENRY W. PEABODY, JOHN R. BRADLEE and CHARLES D. BARRY, trading as co-partners under the firm name and style of Henry W. Peabody & Co.,
Plaintiffs in Error,

vs.

THE UNITED STATES.

No. 466.

WARNER, BARNES & COMPANY, LIMITED,
Appellant,

vs.

THE UNITED STATES.

BRIEF ON REHEARING FOR PLAINTIFFS IN ERROR AND APPELLANT.

PAUL FULLER,
FREDERIC R. COUDERT,
Counsel for Plaintiffs in Error and Appellant.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

Nos. 149 and 466.—October Term, 1904.

No. 149. Frederick W. Lincoln, Henry W. Peabody, John R. Bradlee and Charles D. Barry, trading as co-partners under the firm name and style of Henry W. Peabody & Co., Plaintiffs in Error, *vs.* The United States.	In Error to the District Court of the United States for the Southern District of New York.
No. 466. Warner, Barnes and Company, Limited, Appellant, *vs.* The United States.	Appeal from the Court of Claims.

The re-hearing ordered by this Court upon petition of the Attorney General is confined to the effect of the Act of Congress of July, 1902, upon the illegal exaction of duties from the complainants in these cases.

It is the law of these cases that the moneys exacted from the complainants were illegally exacted, and that such moneys belong to them.

That question is no longer open to argument. The Insular cases establish the proposition. Those cases are now the law of the land (Dorr vs. U. S., 195 U. S., p. 138; Rassmussen vs. U. S., 197 U. S., p. 516; Czarnikow vs. Bidwell, 191 U. S., 559). It is laid down in the opinion of the Court in the present case, and no re-hearing has been permitted with reference to it.

The moneys being then the property of the complainants wrongfully in the possession of the United States, the ques-

tion is: Has this ownership been divested by the Act of July, 1902.

To this question we answer:

I. Congress has no power to divest the complainants of their ownership or to deprive them of their property in the moneys exacted from them, and

II. Congress had no intention to do so by the Act of July, 1902.

I.

The Power of Congress.

The Constitution of the United States provides in the Fifth Amendment

> "that no person * * * shall be deprived of life,
> "liberty or property without due process of law, nor
> "shall private property be taken for public use without
> "just compensation."

A. The moneys were concededly the property of the complainants; they were illegally taken from them; an action was pending in the Courts to recover them. Any Act of Congress which in effect changed the ownership of the moneys and declared the taking, which the Courts held illegal, to be legal, and competent to transfer the title from the individual to the Government, is manifestly one depriving the citizen of his property without due process of law.

> "If this constitutional provision is a sufficient
> "authority," says this Court in *U. S. v. Lee* (106 U. S., at p. 218), "for the court to interfere to rescue a pris-
> "oner from the hands of those holding him under the
> "asserted authority of the Government, what reason is
> "there that the same courts shall not give remedy to

> " the citizen whose property has been seized without
> " due process of law, and devoted to public use with-
> " out just compensation. * * *

(And at p. 219):

> " It is not pretended * * * that the President
> " had any lawful authority to do this [seize plaintiff's
> " estate] or that the legislative body could give him
> " any such authority except upon payment of just com-
> " pensation."

Yet that is exactly what the Government counsel here " pretend."

B. Apart from the right of the complainants to protect their ownership of the moneys as against the United States and to bring suit for recovery—which is the case at bar—it is the settled law of this Court that complainants had a right of recovery against the officer or agent of the Government who made the illegal exaction.

Such was the recovery in DeLima vs. Bidwell (182 U. S., at p. 199).

> " Plaintiffs sue in assumpsit for money which the
> " collector has in his hands, justly and equitably belong-
> " ing to them. To say that Congress could by a subse-
> " quent act deprive them of the right to prosecute this
> " action, would be beyond its power."

This right of recovery, or right of action against the official who makes the exaction or commits the trespass, is recognized in a long line of cases.

Little vs. Barreme, 2 Cr., 170.
Meigs vs. McClung's Lessee, 9 Cr., 11.
Osborn vs. Bank of U. S., 9 Wheat., 738.
Grisar vs. McDowell, 6 Wall., 363.
Bates vs. Clark, 95 U. S., 204.
U. S. vs. Lee, 106 U. S , 196.
Virginia Coupon Cases, 114 U. S., 270.
In re Ayers, 123 U. S., 443.
McGahey vs. Virginia, 135 U. S., 662.
Belknap vs. Schild, 161 U. S., 10.

Such a right of action constitutes property in the same

sense as tangible things and is equally entitled to protection against arbitrary interference or legislative impairment.

Cooley Const. Lim., Sixth Ed., p. 443.
Sutherland Stat. Const., §§ 164, 206.
S. S. Co. vs. Joliffe, 2 Wall., 450, at pp. 457, 458.
Angle vs. Chic. St. P. &c. Ry., 151 U. S., 1, 19.

It has even been held that the denial of a remedy, or the imposition of new conditions or restrictions upon its exercise, is such an interference.

Bronson vs. Kinzie, 1 How., 311, 317.
Barnitz vs. Beverly, 163 U. S., 118, and cases there collated.

If the Act of July, 1902, makes legal the act of the Collector which was illegal at the time it was done, then complainant is deprived of his right of action—of his property—without due process of law, for the act of Congress would be a good defense in an action against the Collector.

> " To hold that Congress intended by this amenda-
> " tory statute to take away that right of action, is to
> " hold that it intended by a retrospective statute to de-
> " stroy a vested right of property or an existing right
> " of action."
>
> Auffm'ordt vs. Rasin, 102 U. S., 622.

> " If, as we assume, the money so taken by the de-
> " fendant illegally from the plaintiff was the money of
> " the plaintiff in the hands of the defendant, which by
> " the principles of the common law he had a *vested*
> " *right* to recover, it was not competent for Congress
> " by subsequent legislation to exclude the plaintiff from
> " his right to apply to the Supreme Court of this State
> " [of which the parties were both citizens] for its re-
> " covery or limit the time within which he should bring
> " such action " (p. 576).
>
> Hubbard vs. Brainard, 35 Conn., 563.

For this reason, that Congress cannot divest rights of property by arbitrary interference, the limitation upon retrospective or retroactive legislation has always been that it must not interfere with intervening rights.

Fleckner vs. Bank U. S., 8 Wheat., 338, 363.

> " Upon principle, every statute, which takes away or
> " impairs vested rights acquired under existing laws, or
> " creates a new obligation, imposes a new duty, or at-
> " taches a new disability, in respect to transactions or

"considerations already past, must be deemed retro-
"spective."

Per STORY, J., in Society vs, Wheeler, 22 Fed. Cases, 756, at p. 767.

Approved in Sturgis vs. Carter, 114 U. S., at p. 519.

The books are full of cases in which original assessments of taxes, issues of bonds by municipal authorities and other like actions, defectively carried out or impaired by irregularity, have been confirmed, ratified and made good by legislative action.

All these cases, it will be seen upon inspection, have reference purely to the *methods* of action employed, and relate to statutes curative only of defects in the *procedure* by which *an undoubted power* has been exercised. As tersely stated by the New York Court of Appeals (RAPALLO, J.), in referring to a legislative validation of an assessment made without the prescribed requisites:

"Though it should be held to validate the assess-
"ments, it could only render them operative from the
"time of its passage, for it must be upheld, if at all, as
"an exercise of the power of taxation whereby the leg-
"islature adopted the apportionment and assessment
"previously made, and imposed the tax directly upon
"the property affected in accordance with such previous
"assessment."

Lennon vs. The Mayor, 55 N. Y., at p. 367.

No cases will be found where in the absence of any *fundamental power* the action complained of has been made good by any subsequent ratification. This is the dividing line which limits the power of ratification.

The proposition here stated is best demonstrated by a quotation from the opinion of Mr. Justice PECKHAM in the case of

Cromwell vs. MacLean, 123 N. Y., 474.

There the Court considered the validity of an act of the legislature confirming sales of lands for the non-payment of taxes theretofore made under a previous act, which sales were invalid because made under an assessment, void for lack of notice to the taxpayer, and held the law unconstitutional as depriving persons of property without due process of law. The Court, per PECKHAM, Judge, there said (at page 489):

" Holding, as we must, that no title or interest in fact " passed to the purchaser at these tax sales, and that the " original owner, therefore, still retained his title, the " effect of the act in question, if valid, is by legislative " fiat to transfer the title of the property of Edward C. " Wilson, as trustee, to the lessees under these invalid " leases. * * * *Has the legislature of this state the right* " *to take the property of A and transfer it to B under the* " *guise of confirming sales made of such land in invitum,* " *but by which no title, in fact or in law, passed from the* " *owner to the purchaser?* The statement of the ques- " tion should be its best answer. Property thus taken " is not taken by due process of law.

" This is not a case within the principle that per- " sons who take conveyances of land by deed, or under " legal proceedings which lack validity by reason of " some omission or informality, take a title or right " subject to the power of the legislature to cure such " errors or defects by acts of retrospective legislation. " Where the proceeding is wholly *in invitum and the* " *defect of such a nature that no title has passed*, the " legislature cannot validate or legalize the proceed- " ing to the extent of itself conveying the title under the " form of confirming a sale under which no title passed. " (See remarks of BIGELOW, Ch. J., in Denny v. Mattoon, " 2 Allen [Mass.], 361, at 382, 383). * * *

" But where the proceedings are so contrary to the " provisions of the statute as to result in no valid assess- " ment whatever, and where the sales made under such " valid assessment convey no title or interest in the " premises to the purchaser, and the original owner has " the same title or interest in his property that he ever " had, there is no principle upon which to base the " power of the legislature under our Constitution by " any legislative act to transfer to the purchaser the " title to the property of the original owner, which such " purchaser would have had if all the proceedings up to " and including the sales had been valid. * * *

" *What difference does it make to say that the legis-* " *lature is acting only in the way of validating pro-* " *ceedings to collect a tax which in justice the owner of the* " *land ought to pay? The answer is that the proceedings* " *have been so fatally defective that no title has passed,* " *and the owner has his title to his property the same as* " *if no tax proceedings had been taken. Where is* " *the authority in such case for the legislature to itself* " *transfer the title to his property to some one else?* If " it be proper that he should pay the tax, the legislature " might itself tax him, giving him opportunity to be

"heard in some way before he must pay, as to the "amount for which he was liable, * * * or it could pro- "vide for further proceedings in order that a legal tax "might be levied, *but by no form of words could it* "*legally transfer the title of the owner to his property* "*to some third person*" (p. 491).

Is not this case precisely analogous to that at bar?

In each a void assessment was attempted to be confirmed by Legislative Act. The sole difference is that in the present case the property, taken without authority under guise of a tax, was money, while in the *Cromwell* case it was land. It has never been pretended (heretofore) that the Constitutional guarantees against expropriation are less applicable to one kind of property than to another.

C. UNLESS CONGRESS COULD IN JULY, 1902, ITSELF IMPOSE THE TAX COMPLAINED OF, IT COULD NOT BY RATIFICATION LEGALIZE ITS UNAUTHORIZED EXACTION.

Congress cannot by its ratification legalize the unlawful act of the Collector in exacting duties from complainants, unless at the time of such ratification it is itself vested with the power to do the act which it assumes to legalize,—unless in other words it may itself at such time lawfully do the very thing complained of.

Congress could not in July, 1902, collect moneys as customs duties from persons who had imported goods in 1899, at a time when the importations were not subject to such duties.

"It [the Legislature], could not ratify an act pre- "viously done, *if at the date it professed to do so*, it "could not confer power to do so in the first instance."
Grenada Co. Supervisors vs. Brogden, 112 U. S., at p. 271.

"To ratify is to give validity to the act of another "and implies that the person or body ratifying *has at* "*the time power to do the act ratified.*"
Norton vs. Shelby Co., 118 U. S., at p. 451.

The power to do the act sought to be legalized must exist in Congress at the time of the ratification. The act must be presently, at the time, as a curative act within the scope of legislative authority.
Kimball vs. Town of Rosedale, 42 Wis., 413.

The question, therefore, is whether in July, 1902, Congress could do what the effect of ratification would operate in the present case?

At the time of the introduction into Manila of the goods involved in this case, it was the right of the claimants, under the then existing law, to ship goods from New York to Manila, without paying any duties or penalties of any character. This was a vested right as the law then stood. It was the right to trade untrammeled by any exactions not legally upon the statute books.

The power of Congress is limited in the levying of duties, to a tax upon the importation of merchandise; but if merchandise has been imported in accordance with existing law and is mingled with the property of the country, Congress has no authority to levy duties upon it.

Could Congress by a retroactive or retrospective law, when the importation had been made under the sanction of existing law, impose a duty or penalty or tax upon goods previously imported into the country? And if Congress could not impose an import duty upon goods already lawfully brought within the country, how can it, by a ratification of a collector's unlawful exaction, accomplish the same end?

This would be to deprive the citizen of property without due process of law.

For instance, if to-day the Collector of New York should exact the payment of duties on importation of articles placed upon the free list by the Tariff Law, could Congress thereafter, by a retroactive act of ratification, make such collection legal?

If the President were to-day to issue an order to all collectors in the United States to collect duties at 100 per cent. advance on those imposed by the Tariff Law, could Congress, by a subsequent act of ratification, legalize such an unlawful assumption of power?

II.

The Intention of Congress.

Congress did not intend to legalize the collection of duties which this Court had decided to have been unlawfully exacted.

I. If such was the purpose of Congress it could have been expressed in language of the utmost simplicity.

It was not so expressed.

Nothing could have been easier for Congress to say than: All collections of duties upon shipments from the United States to the Philippine Islands prior to the passage of this Act are hereby ratified, confirmed and legalized.

II. The Government urges that the Court may infer such a purpose from language which is at the best uncertain and ambiguous.

(*a*) Such an inference would be contrary to the rule adopted in reference to all impositions of taxes or burdens upon the citizen,—the rule being that no burden will be imposed unless unequivocally laid down.

Duties are never imposed upon vague or doubtful interpretations and where a question of classification is one of doubt, the doubt will be resolved in favor of the citizen,—the requirement being that any intention of Congress to impose a higher duty must be expressed in clear and unambiguous language.

Hartranft vs. Wiegmann, 121 U. S., 609.
Am. Net & T. Co. vs. Worthington, 141 U. S., 468.

(*b*) Such an inference would be contrary to the sound and unassailable presumption that the Government is always willing to fulfill its obligations, pay its debts and do complete justice.

> "It is as much the duty of the Government as of "individuals to fulfill its obligations."
> U. S. vs. Klein, 13 Wall., p. 144.

> "The supposition that the Government will not pay "its debts, or will not do justice, is not to be indulged."
> Gibbons vs. U. S., 8 Wall., 269, at p. 274.

> " The land is certainly the property of the plaintiff " below, and the United States cannot have intended to " to deprive him of it, by violence, and without com- " pensation."
>
> Meigs vs. McClung's Lessee, 9 Cr. 11.

Is personal property any less sacred than land?

(c) Such an inference would be contrary to the intent of Congress as shown in contemporary acts which authorized the refunding to citizens of duties unadvisedly collected on shipments to and from Porto Rico and from the Philippines.

> *Act of April 29, 1902*, U. S. Stat. Vol. 32, part I, p. 176, refunding with interest duties collected in Porto Rico, for which no action had been brought.
>
> *Act of March 3, 1903*, U. S. Stat. Vol. 32, part I, p. 1224, refunding duties paid without protest on shipments from Porto Rico and the Philippines, unlawfully exacted, but as to which the defence of voluntary payment was available to the United States.
>
> *Act of March 3, 1905*, U. S. Stat. Vol. 33, part I, p. 1013, extending time to bring suits under Act of April 29, 1902.

These acts demonstrate the settled policy of Congress to conform to the interpretation of the law as laid down by this Court and facilitate the recovery of duties illegally exacted as soon as this Court has adjudged them illegal. There has been as yet no such act in regard to duties on imports into the Philippines, because, until the decision of the cases at bar, the legality of such duties was still *sub judice*.

> "As the Courts will not interfere with the action of the " legislature, so it may rightfully be presumed that the legisla- " ture never intends to interfere with the action of the Courts " or assume judicial functions to itself."
>
> Brewer, J., in Angle vs. Chicago & St. Paul Railway, 151 U. S., at p. 20.

(d) Finally, such an inference would assume that Congress intended to ignore the prohibitions of the Fifth Amendment to the Constitution and to deprive the citizen of his property without due process of law, and to take his property for public use without compensation. If such an inference could be drawn it would invalidate the Act, and this the Court will not

do unless the language of the statute is so plain as to leave no room for construction (see cases collected in 190 U. S., 214).

> "Our duty, therefore, is to adopt that construction "which, without doing violence to the fair meaning of "the words used, brings the statute into harmony with "the provisions of the Constitution. * * * And "such is the rule recognized by the Supreme Court of "Mississippi in *Marshall v. Grimes*, 41 Miss., 27, 31, in "which it was said: 'General words in the act should "'not be so construed as to give an effect to it beyond "'the legislative power, and thereby render the act un-"'constitutional. But, if possible, a construction "'should be given to it that will render it free from "'constitutional objection, and the presumption must "'be that the legislature intended to grant such rights "'as were legitimately within its power.' Again, in "*Sykes v. Mayor, &c.*, 55 Mississippi, 115, 143: 'It "'ought never to be assumed that the law-making de-"'partment of the government intended to usurp or "'assume power prohibited to it. And such construc-"'tion (if the words will admit of it) ought to be put "'on its legislation as will make it consistent with the "'supreme law.'"
>
> Grenada Co. Supervisors vs. Brogden, 112 U. S., p. 269.

III. If, however, the Court were at liberty to search the language of the Statute for possible inferences and interpretations upon which to uphold the imposition of a burden not expressed in plain terms, no such inference can reasonably be drawn.

The act purports to ratify not *every* act of the authorities *in collecting duties*, but only

> "the action of the President * * * *as set forth in* "*his order* of July 12th, 1898, whereby a tariff of du-"ties and taxes, *as set forth by said order*, was to be "* * * collected * * * together with the sub-"sequent amendments of said order * * * and "the action of the authorities of the Government of "the Philippine Islands, *taken in accordance with the* "*provisions of said order* and subsequent amendments."

This Court has already held in the Dooley case, 182 U. S., at p. 235, that the "proper construction" of that order is that it ceased to apply to goods imported from the United States

from the moment the United States ceased to be a foreign country with respect to the Insular possessions, and as a consequence of this construction of the order, this Court held that the order itself did not authorize the collection of duties after the ratification of the treaty of peace. It must of necessity follow that an act of Congress ratifying what was done in pursuance of that order does not reach the collection of duties by subordinate authorities after the date of ratification. The order, this Court has said, did not contemplate or authorize such collection ; if it had it would have been void *pro tanto* as exceeding the power of the President.

In the case at bar (197 U. S., p. 428) this construction of the order is confirmed :

> " It plainly was an order intended to deal with im-
> " ports from foreign countries only and Philippine
> " ports not in the actual military control of the United
> " States."

It is urged, however, that, accepting this construction of the order, and admitting that it was inapplicable to shipments between the United States and the Philippines after the Treaty of Cession, yet subsequent amendments were applicable to such shipments. These so-called amendments or subsequents orders are of two categories :—those made by the President, and those made by subordinates, either military officers, or the Military Governor of the Philippines. Those of the latter category we will not discuss, as it is obvious that subordinates cannot amend an order of their Chief, and moreover they dealt with regulations and schedules and like incidents of a minor character.

With reference to any supposed Presidential amendments to the war order of July 12, 1898, we would first call attention to the statement in the Government's final brief upon petition for re-hearing :

> " The President, during the War emergencies, di-
> " rected his officers to act in a certain way, to collect
> " duties under a provisional tariff. If his orders to
> " that effect, before the Treaty, were technically legis-
> " lation, that was valid legislation beyond question and
> " needed no ratification from Congress. These orders
> " fell, let us say, as valid legislation on April 11, 1899,

" *but the President continued to do the things prescribed,* " without immediate authority. *He did not legislate ;* " he did not re-establish former legislation ; he simply " acted and continued to act." * * * (pp. 13, 14).

According to this view, the subsequent orders were merely carrying out " *the thing prescribed* " in the original order of the President, and operated no change in the construction or operation of such order ; they were " in accordance " with the original order, and were ratified by Congress as being " in accordance " therewith.

The question then presents itself, whether as the Government contends, the President by these subsequent orders " continued to do the thing prescribed " by his former order—his former legislation.

The thing prescribed by the original order, as twice held by this Court, was the collection of duties on imports from foreign countries, and so far as the President continued to do this, after the ratification of the treaty, the action was in accordance with the " thing prescribed " and was within the terms of the ratification. But the first mistake into which the Government has fallen, is to assume that because that valid military legislation of the President continued as valid legislation after the treaty of cession, it applied after such cession to anything but foreign countries.

These subsequent " acts " were not alterations of the President's order. The purpose of that order was to impose customs duties on commercial intercourse between the Philippines and foreign countries ; the misapplication of the order continued by the amendments, was to enforce its tariff schedules against American commerce with the Philippines after they had become domestic, under the erroneous impression that the insurrection made the Philippines foreign, an error only dispelled by the decision of the Fourteen Diamond Rings (183 U. S., 176).

This is attested by Secretary Root's dispatch (p. 8 Brief Atty. Genl. on Petition for Rehearing) as follows :

" The most obvious distinction between the status of Porto " Rico and the Philippines after the cession, indicated in the " opinion of the Court, is in the fact that Porto Rico was at " the time of cession in free peaceable possession, while a state " of war has continued in the Philippines."

Thus the Administration itself held the view that the order of July, 1898, applied to foreign countries, and only applied it to the United States in the belief that the existence of the insurrection suspended the operation of the Treaty as a nationalization of the Archipelago.

Moreover there is serious doubt whether this War legislation, so far as it imposed duties on importations into the Philippines after the Treaty of Cession, different from the rate of duties which Congress had imposed upon importations from foreign countries, *was* valid legislation.

The solicitor general thus describes the action taken:

> " It must be remembered that the Philippine tariff
> " did not apply the Dingley schedules to foreign coun-
> " tries. Our military authorities, continuing Spanish
> " rates for that oriental locality, after discontinuing the
> " preferences to Spain, taxed with a view to local needs.
> " They admitted free what we tax, or they taxed lightly
> " what we tax heavily." (Add. brief for appellee, p. 7.)

Under the decisions of this Court in *Cross vs. Harrison* (16 How., 164) and *Dooley vs. U. S.* (182 U. S., 222), it was the duty of the President under his obligation to enforce the laws of the United States, to put in operation in the Philippine Islands after the Treaty of Cession the duties prescribed by the Tariff laws of the United States.

In Dooley vs. U. S., 182 U. S., at p. 232 (as well as in De Lima vs. Bidwell, 182 U. S., p. 184 *et seq.*), the Court adverts to the decision in Cross vs. Harrison as holding:

> " that the right of the military commander to exact
> " the duties prescribed *by the tariff laws of the United*
> " *States* continued until a collector of customs had been
> " appointed."

And also:

> " That the war tariff, however, was abandoned as soon
> " as the Military Governor had received from Wash-
> " ington information of the exchange and ratification of
> " the treaty with Mexico, and duties were afterwards
> " levied in conformity with such as Congress had im-
> " posed upon foreign merchandise imported into other
> " ports of the United States, Upper California having
> " been ceded by the treaty to the United States."

But, conceding for the sake of the argument that these decisions left in doubt the question whether the Tariff Laws of the United States in force at the time of cession applied immediately upon the cession to the newly-ceded territory, the existence of such a doubt would be ample reason for Congress to ratify the various acts of the President dealing with the Philippine Islands in reference to customs upon a different basis from the existing Tariff Laws of the United States, and assuming the power in time of peace to create collection districts, sub-ports of entry and civil offices, which, ordinarily at least, Congress has the sole power to do.

As further instances of this doubtful exercise of Presidential power:

By an order of April 17, 1899, six days after the Treaty of Cession, the Secretary of War, "by direction of the President," amended Paragraph 178 of his War Tariff by the addition of several articles to the dutiable list (Tariff Circular No. 53, War Dept., 17 April, 1899); by his order of May 3, 1899 (Tariff Circ. No. 65, War Dept., 5 May, 1899) the President constituted the Philippine Archipelago and the Island of Guam a Collection District, with Manila as chief Port of Entry, created several sub-ports of entry, and directed the appointment of collectors; by order of 8th May, 1899 (Circ. No. 20, Div. of Customs and Insular Aff.) "by virtue of his authority as Commander-in-Chief" he created offices such as auditor and sub-auditor in the Island of Guam.

All of these instances revealed the exercise of powers in time of peace, which were, to say the least, of questionable validity.

The power to create collection districts, ports of entry, ports of delivery, and sub-ports of entry, and to determine the number of collectors, has always been exercised by Congress (see Rev. Stat. Title "Collection of Duties upon imports, Chap. I."—"Collection Districts, Ports and Officers," §§ 2517, *et seq.*).

These are the "subsequent amendments" which Congress by the Act of July, 1902, has adopted as its own, thus ratifying a very doubtful exercise of power by the President taken under circumstances which called for action while they furnished little or no precedent for his guidance.

Here was ample subject matter for the Ratifying Act of Congress, without straining the interpretation of the act to cover duties which, as this Court has held, the original order never intended to exact; and this in the face of the other Acts of Congress freely refunding duties of the same character collected in Porto Rico. Any shadow of doubt cast upon any act of the Executive acting as Commander-in-Chief has always been considered sufficient excuse for a Ratifying Act by Congress. The leading cases of *Hamilton vs. Dillin* (21 Wall., p. 73) and *Prize cases* (2 Black, 635) involved ratifications by Congress of Presidential orders which the Court held were clearly within his war powers as Commander-in-Chief; acts done in time of war and essential as war measures.

In this instance, we have several orders made or interpreted in time of peace, upon the erroneous assumption so earnestly contended for by the Government in this case, that they were made in time of war, and under the war power. The ratification of such action by the Act of 1902 is a sufficient answer to the Government's query: What did the act of Congress ratify, if it did not ratify the collection of duties on shipments from the United States into the Philippines after the Treaty of Cession? And there is no need, in the endeavor to find a valid and important purpose in the act, to torture its terms into a confiscation of the plaintiffs' property without due process of law.

In conclusion we respectfully insist that there was no intention to ratify the collection of the sums sought to be recovered in this action, and no power in Congress to do so, if it had any such intention, and the decision already rendered should be maintained.

New York, 30 December, 1905.

PAUL FULLER,
FREDERIC R. COUDERT,
Of Counsel.